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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/690,817

10/23/2003

Yoshitaka Mishima

2038-303

5433

22429 7590 05/14/2007  
LOWE HAUPTMAN BERNER, LLP  
1700 DIAGONAL ROAD  
SUITE 300  
ALEXANDRIA, VA 22314

EXAMINER

ANDERSON, CATHARINE L

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

05/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/690,817

Applicant(s)

MISHIMA ET AL.

Examiner

C. Lynne Anderson

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3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-10,12-15 and 17-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-10,12-15 and 17-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 February 2007 has been entered.

### ***Response to Arguments***

Applicant's arguments filed 23 February 2007 have been fully considered but they are not persuasive.

In response to the applicant's arguments with respect to claims 1, 14, and 20, recitation of the functionality of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of functioning as claimed, then it meets the claim. The annular portion of Lovert is fully capable of being inserted from below the holder member, even if this method of insertion is not disclosed in the prior art.

In response to the applicant's arguments with respect to claim 9, it is noted that the present claim discloses the X-shaped sheet is positioned on top and bonded to the topsheet. The X-shaped sheet is not claimed as being positioned on top of the

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topsheet; the limitation "on top" is not defined in the claim as in reference to the topsheet.

In response to the applicant's arguments with respect to claims 13, 17, and 22, it is noted that the present claims disclose the absorbent core is "disposed at" and not directly on the top wall. The absorbent core of Ahlstrand is located proximal the top wall, and therefore fulfills the claimed limitation of "disposed at."

In response to the applicant's arguments with respect to claims 19 and 23, it is noted that the discharge containing portion of Lovret, as shown in figure 2, has a height at its end closest to the longitudinal end portions of the article that is smaller than the height of the annular portion. Since the location at which the height of the discharge containing portion is not defined by the present claim, Lovret fulfills the limitations of the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15, and 17-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovret (3,532,093) in view of Ahlstrand et al. (6,183,458).

Lovret discloses all aspects of the claimed invention with the exception of the discharge containing portion containing absorbent material.

With respect to claims 14 and 20, Lovret discloses a disposable wearing article 10, as shown in figure 1, comprising a holder member 15 having a front waist region 13 a rear waist region 14, and a crotch portion 12. The holder member 15 has an upper surface and a lower surface, and a through-hole 40, as shown in figure 2. A receiving member comprises an annular portion 41 located on the upper surface of holder member 15. The receiving member further comprises a discharge containing portion 50, shown in figure 6, which is positioned below the lower surface of holder member 15 in compartment 16, as shown in figure 2.

Ahlstrand teaches the use of absorbent material in the discharge receiving portion of a disposable wearing article, as shown in figure 4, to absorb the liquid in the receiving portion. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the receiving portion of Lovret with absorbent material, as taught by Ahlstrand, to absorb liquid.

With respect to claims 15 and 21, the discharge containment portion 50 is liquid impervious, as disclosed in column 3, lines 38-40, and enlargeable under the weight of discharge, as disclosed in column 3, lines 64-67.

With respect to claims 17 and 22, the discharge containing portion 50 has a top wall 52, a bottom wall (shown in figure 6 but not numbered), and a side wall 51. The absorbent material taught by Ahlstrand is upwardly spaced from the bottom wall by interval 8, as shown by Ahlstrand in figure 3.

With respect to claim 18, the annular portion 41 extends upwardly from the upper side of the top wall 51, as shown in figure 2.

With respect to claims 19 and 23, the annular portion 41 comprises a flexible and elastically compressible material, as disclosed in column 3, lines 35-37 and 3-15. The annular portion 41 has a height greater than the edge portion of the compartment 16 containing the discharge containing portion, as shown in figure 2.

Claims 1-2, 4-10, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovret (3,532,093) in view of , and further in view of Tsuji et al. (6,808,516).

Lovret discloses all aspects of the claimed invention with the exception of the discharge containing portion containing absorbent material and the holder member having an X-shaped sheet.

With respect to claim 1, Lovret discloses a disposable wearing article 10, as shown in figure 1, comprising a holder member 15 having a front waist region 13 a rear waist region 14, and a crotch portion 12. The holder member 15 has an upper surface and a lower surface, and a through-hole 40, as shown in figure 2. A receiving member comprises an annular portion 41 located on the upper surface of holder member 15. The receiving member further comprises a discharge containing portion 50, shown in figure 6, which is positioned below the lower surface of holder member 15 in compartment 16, as shown in figure 2.

Tsuji teaches the use of a high elasticity segment 20 having an X-shape attached to a holder member 3 and 4, as shown in figure 5, to provide the article with a more

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secure, leak-proof fit, as disclosed in column 1, line 45, to column 2, line 8. It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the article of Lovret with the holder member having a high-elasticity segment of Tsuji to provide a more secure, leak-proof fit.

With respect to claim 2, the front and rear waist regions 13 and 14 are releasably engaged by fasteners 21, as shown in figure 1.

With respect to claim 4, the annular portion 41 comprises flexible and elastically compressible foamed plastic, as disclosed in column 3, lines 35-37 and 3-15.

With respect to claim 5, the discharge containment portion 50 is liquid impervious, as disclosed in column 3, lines 38-40, and enlargeable under the weight of discharge, as disclosed in column 3, lines 64-67.

With respect to claim 6, the holder member is fully capable of being washed and reused.


With respect to claims 7-10, the holder member, as modified by Tsuji, comprises a topsheet 3, a backsheet 4, and an X-shaped elastically stretchable sheet 20, as shown in figure 5. The X-shaped sheet 20 is bonded between the topsheet and backsheet, as disclosed by Tsuji in column 7, lines 20-24.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
cla  
May 8, 2007

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

